IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

THURSDAY, THE SIXTEENTH DAY OF NOVEMBER
TWO THOUSAND AND SIX

PRESENT

THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION No.15976 OF 2004

Between:

S.Satya Vani and others.

..... PETITIONERS

AND

The Commissioner, Tadepalligudem
Municipality, Tadepalligudem,
West Godavari District.

....RESPONDENT

THE HONOURABLE SRI JUSTICE
P.S.NARAYANA

WRIT PETITION NO.15976 OF 2004

O R D E R

Heard Sri V.S.N.Sarma, the counsel representing the writ petitioners and Sri Nageshwara Reddy, learned Standing Counsel representing respondent-Commissioner, Tadepalligudem Municipality.

The writ petition is filed praying for a Writ of Mandamus, directing the respondent, not to demolish the building bearing Municipal Door Nos.11-7-33, 2-1-35 and 3-1-49, situated at K.N.Road, Tadepalligudem, West Godavari District and by declaring the action of the respondent in issuing Proceedings Roc.No.608/2004-81, dated 11-8-2004 as illegal, arbitrary and contrary to law.

Sri V.S.N.Sharma, learned counsel representing the writ petitioner would submit that certain writ petitions, wherein the similarly placed petitioners in the said writ petitions as the present writ petitioners in W.P.No.14401 of 2004 and batch, were allowed by this Court by an order dated 26.04.2006. Hence, in the facts and circumstances, the present writ petition may also be allowed.

Learned Standing Counsel would submit that in the light of the facts and circumstances of the case and also in view of the order already made by this Court in a batch of writ petitions, the present writ petition may also be

disposed of.

The first writ petitioner had sworn to the affidavit on her behalf and also on behalf of writ petitioners 2 and 3 as well. It is stated in para 2 of the affidavit filed in support of the writ petition that the petitioners are the owners of the building bearing Municipal Door Nos.11-7-33, 2-1-35 and 3-1-49 respectively situated at K.N.Road, Tadepalligudem, West Godavari District. The said buildings were constructed long back. The Municipal Authorities have inspected the buildings several times and have been collecting property taxes. They never found any deviations in the construction of the buildings.

It is further stated in para-3 of the writ affidavit that the existing K.N.Road, Tadepalligudem is 80 feet width. The Municipal Authorities now wanted to widen the road at 100 feet. The respondent has to follow the guidelines given by the Division Bench of this Honourable Court dated 03.02.1998 made in W.P.No.20884 of 1997, before ordering the demolition of the properties for the said purpose. It is stated that the respondent in order to circumvent the procedure to be adopted as directed by this Honourable Court as stated above, issued the proceedings G1/608/04, dated 09.06.2004 to all the building owners asking to provide set back space of 15 feet width road to avoid unauthorized parking of the vehicles on the road. It is stated that some persons filed W.P.Nos.9510, 10031 and 10035 of 2004 questioning the said notices and this Honourable Court by its order dated 14.06.2004 and 18.06.2004 quashed the said notices while allowing the writ petitions and it was further observed that, however it is open to the respondent Municipality to issue show cause notice to the petitioners and take appropriate action in accordance with law.

It is further stated in para-4 of the writ affidavit that the respondent issued proceedings on 05.08.2004, wherein it was stated that under Sections 228(1) and (2) and 217(1) and (2) of A.P. Municipality Act, 1965 (hereinafter referred to as 'the Act' for the purpose of convenience), it was alleged in the said notice that the petitioners have constructed the buildings adjoining K.N.Road, contrary to the sanctioned plan and that the portion constructed

by the petitioners has to be removed and asked the petitioners to file objections within three days from the date of receipt of the said notice together with the sanctioned plan to the Municipality. It was further stated that if no reply is received within the stipulated time, further action will be taken against the petitioners in accordance with the A.P. Municipalities Act, 1965. The respondent without inspecting the buildings and without conducting any enquiry came to the conclusion mechanically that the petitioners have violated the conditions and issued similar notices to about 300 building owners on the same day. This shows that the respondent did not inspect any building and the time granted i.e. three days is mostly unreasonable.

It is further stated in para-5 of the writ affidavit that the said proceedings did not show in what respect the petitioners herein have violated the conditions of the permit or the constructions were contrary to the plan sanctioned by the authorities. In the absence of such allegations, specifically it cannot be said that the charge of construction contrary to the permit granted by the authorities is established. If particulars are given, the petitioners would have submitted objections in an effective way.

It is further stated that the petitioners have submitted reply along with the relevant documents on 09.08.2004 and on 08.08.2004 denying the allegations specified in the proceedings dated 05.08.2004 and the respondents without considering the objections, without giving any opportunity and without following the due procedure, issued the impugned proceedings. Hence, the present writ petition.

As can be seen from the impugned proceedings, the respondent had not specified any deviations or unauthorized constructions in respect of the buildings in question in the impugned proceedings issued under Sections 228(1) and (2) and 217(1) and (2) of the Act. The notices issued by the respondent are vague and also devoid of the material particulars. Specific stand was taken by the writ petitioners that they have filed detailed

explanations stating that there are no unauthorized structures and they had not proceeded with any illegal constructions and when such stand is taken, it is always open to the respondent-Municipality to inspect the buildings in question and specify the particulars of unauthorized constructions or deviations as the case may be. But without conducting any enquiry and without issuing any specific notice, it would not be just and proper to issue vague proceedings without any particulars calling upon the petitioners to submit their explanations or objections.

It appears that in similar factual situation, similar notices had been set aside in W.P.No.9510 of 2004 and batch dated 14.06.2004. Likewise, similar view was expressed by a learned Judge in W.P.No.14401 of 2004 and batch by an order dated 26.04.2006. The relevant portion of the order in the batch of writ petitions referred to supra reads as hereunder:

> "Having regard to the facts and circumstances of the case, the impugned notices are set aside keeping it open for the respondent to issue a fresh notice specifying the deviations/unauthorized constructions calling upon the petitioners to submit explanations and if any suitable explanations are filed it is open for the respondents to pass a reasoned final order till then the respondent shall not resort to any demolition of the buildings of the petitioners."

In the light of the view expressed by the learned Judge in W.P.No.14401 of 2004 and batch, it is needless to say that the writ petitioners are bound to succeed to the extent indicated above and accordingly, the writ petition is hereby allowed as specified supra. No order as to costs.

JUSTICE P.S.NARAYANA

16th NOVEMBER, 2006
PGS

THE HONOURABLE SRI JUSTICE
P.S.NARAYANA

WRIT PETITION NO.15976 OF 2004

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